

Alan W. Chambers

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

4

5 IN RE: DIGITEK PRODUCT LIABILITY
6 LITIGATION

7 ALAN CHAMBERS,
8 Plaintiff

9 V MDL NO. 2:08-1175

10 ACTAVIS TOTOWA, LLC, et al.,
11 Defendants

12

13

14 Oral deposition of ALAN W.
15 CHAMBERS, taken at the law offices of
16 Locks Law Firm, 457 Haddonfield Road,
17 Suite 500, Cherry Hill, New Jersey, on
18 Tuesday, September 22, 2009, commencing
19 at approximately 10:20 a.m., before
20 Maureen E. Broderick, a Registered
21 Professional Reporter and Notary Public,
22 pursuant to notice.

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1 whatever.

2 Q. What did the technician tell you
3 about the recall?

4 A. Basically, they told me that the
5 dosage was improper. She was very
6 limited as to her information. The
7 dosage, you know, was improper
8 specifications. So that was the reason
9 for the recall.

10 Q. Did you ask her any questions
11 about the recall?

12 A. I just asked her why was it
13 recalled and that's basically what she
14 told me.

15 Q. And you don't recall speaking to
16 the pharmacist about the recall?

17 A. No. No.

18 Q. What did you do once you found out
19 about the recall?

20 A. Well, I was out of it, so I didn't
21 take it. I waited for a short period of
22 time to have somebody call me, which
23 never happened.

24 Q. So what did you personally do once
25 you found out about the recall with

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1 respect to your Digitek?

2 A. I had a routine -- I had a visit
3 to my -- my cardiologist, I see him
4 every three months. And in, I believe,
5 it was June I went to see him.

6 I more or less left it up to
7 my doctor to inform me as to any
8 alternative or whatever, which didn't
9 happen, basically.

10 Q. What did your doctor say to you
11 about the Digitek recall when you saw
12 him, you believe, in June?

13 A. I saw him in March, which was
14 before the recall. I told him --

15 MR. PETTIT: Hang on. Just
16 make sure you're answering the right
17 question.

18 You can answer however you
19 want, just answer his question after the
20 recall.

21 THE WITNESS: Can you repeat
22 the question. I forget what the --

23 BY MR. SIMON:

24 Q. Well, you were telling me that you
25 saw your doctor before you found out

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1 about the recall in March of 2008,
2 correct?

3 A. Yes. It was a routine visit, yes.

4 Q. And did you discuss Digitek at all
5 at that visit?

6 A. I mentioned to him that I was
7 experiencing contractions and he said he
8 felt it was the device. I have an
9 implanted defibrillator and he mentioned
10 that he thought it was the device
11 causing that, the contractions, not the
12 medication.

13 Q. And did you specifically ask him
14 about the medication Digitek you were
15 taking?

16 A. Yes, I did. Because I wasn't sure
17 what was causing the severe
18 contractions. I wasn't getting them all
19 the time, but I was getting them. And
20 they're different from palpitations.

21 I'm used to getting
22 palpitations with my condition. These
23 were strong contractions I was getting,
24 which was different.

25 And he said -- that's when he

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1 discussion with Dr. McDermet about your
2 contractions in August --

3 A. That is correct.

4 Q. -- of 2008.

5 You have to wait until I
6 finish my question.

7 A. Okay.

8 Q. And that's what prompted your
9 discussion with Dr. McDermet about the
10 contractions you were having in July and
11 August of 2008.

12 A. Yes. That's correct.

13 Q. And the contractions you were
14 having in July and August of 2008, were
15 they similar to the contractions you
16 were having back in March of 2008?

17 A. Yes. As far as I can recall, yes.

18 Q. Now, you indicated earlier that
19 you routinely have what you described as
20 palpitations, correct?

21 A. Yes.

22 Q. Describe for me what you mean by
23 "palpitations."

24 A. It's been described by others,
25 I've read, that there's a -- it feels

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1 that they incurred.

2 Q. Did you incur any expenses for
3 doctor visits as a result of your use of
4 Digitek?

5 A. I have one doctor's visit in June,
6 which was my doctor visit. That's
7 basically a routine doctor visit.

8 Q. Are you seeking to recover for the
9 expenses for that June office visit?

10 A. Yes. Yes.

11 Q. Was that a regularly scheduled
12 three-month interval office visit?

13 A. Yes.

14 Q. And the June of 2008 office visit
15 for which you seek to recover expenses
16 would have occurred even if you weren't
17 taking Digitek.

18 A. That's correct.

19 Q. Did you undergo any testing as a
20 result of your use of Digitek?

21 A. No.

22 Q. Are you seeking to recover for any
23 testing that you underwent?

24 A. No.

25 Q. Have your physicians suggested to

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1 and continue to have them periodically
2 on an ongoing basis?

3 A. That's correct.

4 Q. Why did you want to become
5 involved in this lawsuit?

6 A. My feelings are that being that
7 the product was recalled, that people,
8 like myself, that were taking the
9 product, the medication, are entitled to
10 reimbursement of expenses that may have
11 been -- that was, you know, directly
12 responsible from the recalled Digitek;
13 testing, doctors' visits, medication,
14 whatever.

15 Q. What expenses are you claiming
16 were directly caused by your use of the
17 recalled Digitek?

18 A. It would have been the expense of
19 the medication itself.

20 Q. How much were you paying for your
21 Digitek?

22 A. I pay \$5 copay each time I take
23 out a prescription.

24 Q. Do you pay \$5 for all your
25 medications?

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1 A. Approximately two hours.

2 Q. Did you review any documents in
3 preparation for today's deposition?

4 A. My medical records.

5 Q. Anything else?

6 A. No. Other than that, it was...

7 Q. What medical records did you
8 review?

9 A. My visits to my cardiologist in
10 2008.

11 Q. Did you review any other medical
12 records, besides your cardiologist,
13 cardiology visits, in 2008?

14 A. No.

15 Q. Did you take any notes during your
16 deposition preparation session?

17 A. No.

18 Q. Did you review any of the legal
19 documents that were filed in this case?

20 A. No.

21 Q. Have you ever reviewed the
22 Complaint that was filed in this case?

23 A. No, I haven't.

24 Q. Have you ever reviewed what is
25 called a Plaintiff Fact Sheet with a

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1 A. No. Other than it was probably
2 just a -- the only time I ever see him
3 is a routine scheduled visit.

4 Q. Now, Dr. Burke's note indicates
5 that you were doing better and the heart
6 rate was controlled.

7 Is that an accurate
8 assessment of how you were feeling at
9 that time?

10 A. Yes. I was feeling better because
11 of the -- I had had the defibrillator
12 done the year before, May of 2007, and
13 overall I was feeling better, yes. I
14 improved rather significantly.

15 Q. The next office visit occurred,
16 according to the records, on March 13th
17 of 2008.

18 A. Yes.

19 Q. And at that visit it was noted
20 that you self-discontinued digoxin.

21 Does that refresh your
22 recollection or remind you of anything?

23 A. As far as I can recall, I guess if
24 it records it.

25 I was concerned because I was

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1 Q. First of all, had you restarted
2 the Digitek as Dr. Burke asked you to do
3 in March?

4 A. I went to -- I ran out of the
5 Digitek and then I was taking the
6 Digitek through that period. And when
7 the recall came about, I ran out, I had
8 run out. So that's why I went in to get
9 it refilled and they informed me about
10 the recall.

11 So it was probably this --
12 within a week or so of that visit. That
13 would have been, I guess, before the
14 recall, I guess.

15 Q. Right.

16 But you would have started
17 taking the Digitek again, as Dr. Burke
18 instructed you to do --

19 A. Yes. That's correct.

20 Q. -- in March of 2008.

21 A. That's correct. Yes.

22 Q. Then you came back in April of
23 2008 to get a refill of the Digitek?

24 A. Either it would have been April or
25 early May, whenever the -- it was within

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1 A. No.

2 Q. Do you have any of the packaging
3 material or pill vials that your Digitek
4 prescriptions came in?

5 A. No.

6 Q. What did you do with those?

7 A. Tossed them out when I was
8 finished.

9 Q. Did you have any leftover Digitek
10 tablets?

11 A. No.

12 Q. So all the Digitek tablets you had
13 you took.

14 A. Yes.

15 Q. What about digoxin tablets; do you
16 have any --

17 A. Yes.

18 Q. -- remaining digoxin tablets?

19 A. Yes. My attorney has them.

20 Q. What type of packaging did the
21 digoxin tablets come in?

22 A. Regular pharmacy, orange,
23 childproof cap type. Standard pharmacy
24 bottle.

25 Q. And you gave that to your

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1 Q. Did you notice anything different
2 about the pills?

3 A. No.

4 Q. Did you ever take more than one
5 Digitek pill at a time?

6 A. No.

7 Q. Would you take your Digitek
8 medication with a meal?

9 A. Yes.

10 Q. What meal would you take your
11 Digitek with?

12 A. Depending on what time I took it,
13 in the day, which would be breakfast.

14 Q. What do you normally have for
15 breakfast?

16 A. I have cereal, maybe a glass of
17 orange juice, a piece of toast
18 sometimes.

19 Q. In 2008 were you taking any
20 non-prescription medications?

21 A. No.

22 Q. What about any herbal products or
23 natural remedies?

24 A. No.

25 Q. Have any of your physicians or

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1 healthcare providers told you that you
2 experienced digoxin toxicity?

3 A. No.

4 Q. Did any of your physicians or
5 healthcare providers indicate to you
6 that you experienced a Digitek or
7 digoxin overdose?

8 A. No.

9 Q. Do you believe that you received a
10 double dose of Digitek?

11 A. I wouldn't be aware of it as a
12 layman.

13 Q. Are you claiming that you have or
14 may develop any mental, psychological or
15 emotional conditions as a result of your
16 use of Digitek?

17 A. No.

18 Q. Is it accurate to say that you
19 have not had to limit your daily
20 activities in any way because of your
21 use of Digitek?

22 A. Yes, it's accurate.

23 Q. Any limitations are due to your
24 underlying heart condition, correct?

25 A. That's correct. My heart

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1 Q. They instructed you verbally that
2 there was a recall.

3 A. Yes.

4 Q. You understand that this lawsuit
5 is a class action lawsuit, correct?

6 A. Yes.

7 Q. What does that mean to you?

8 A. It's a representation of, in my
9 case, residents of New Jersey to be
10 compensated for financial outgo
11 pertaining to doctors' visits,
12 medication expenses, and any testing
13 involved with Digitek, with the recalled
14 Digitek.

15 Q. Do you understand that you could
16 have filed an individual claim relating
17 to your purchase of Digitek?

18 A. I'm not totally aware of that.

19 But I imagine there's other avenues I
20 could pursue, but I didn't.

21 Q. Do you understand that you have
22 special duties or responsibilities as a
23 class representative?

24 A. Yes.

25 Q. What do you understand those

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1 fact that I'm not -- it's not a personal
2 injury case, I don't -- I'm kind of
3 having trouble correlating that with the
4 question you asked me.

5 Like my attorney said, it's
6 kind of a vague -- I don't know.

7 BY MR. SIMON:

8 Q. Do you need ongoing medical
9 monitoring or testing as a result of
10 your use of Digitek?

11 A. Not that I'm aware of, no.

12 Q. Are you representing a class of
13 people who need ongoing medical testing
14 or monitoring?

15 A. I'm representing simply people, as
16 I stated before, that are to be
17 compensated for expenses that they --
18 when they were under the recalled
19 product, pertaining to doctors' visits
20 or any testing and medication expenses.

21 That's the only understanding
22 I have of what I'm representing.

23 Q. Do those people who you represent,
24 do their expenses include future medical
25 testing and monitoring as a result of

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1 their use of Digitek?

2 A. I can't answer that.

3 Q. Why not?

4 A. I think if it's a result of the
5 problem with the Digitek and it's
6 related to expenses that they had to
7 incur for periodic testing, I would say
8 whatever test they need to have as a
9 result of the recalled product, that
10 would be covered in compensation.

11 Q. Do you recognize that there may be
12 some people who believe they were
13 physically or mentally injured because
14 of their use of Digitek?

15 A. I understand there may be people.
16 In my -- In my situation here, I don't
17 believe I represent them, but I do
18 understand what you're saying there.

19 Q. And those people would have also
20 paid for their Digitek, correct?

21 A. Yes.

22 Q. But you're not seeking to recover
23 anything, other than the purchase price
24 in your lawsuit, correct?

25 A. Well, I didn't have any testing or

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1 anything. I guess, yeah, that would be
2 the case, yes, in my particular...

3 Q. Do you understand that it's
4 possible by limiting their claims to a
5 refund claim, that you may prevent them
6 from filing a separate suit about their
7 claimed physical injuries?

8 MR. PETTIT: Object to the
9 form.

10 THE WITNESS: I'm not an
11 attorney, obviously. So I'm not aware
12 of how the legal process proceeds. I'm
13 here to represent them in this initial
14 case.

15 BY MR. SIMON:

16 Q. How was it that you were selected
17 as a class representative?

18 MR. PETTIT: Object to the
19 form.

20 THE WITNESS: I was asked if
21 I would like to represent the class.

22 BY MR. SIMON:

23 Q. Why do you want to represent the
24 proposed class?

25 MR. PETTIT: Objection.

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1 A. Right. I still have the machine.

2 I don't use it.

3 Q. What is the total amount that
4 you're claiming in this lawsuit for you
5 personally?

6 A. I guess my own situation -- my own
7 situation would be for three -- I
8 believe I had three prescriptions. I
9 might be incorrect with that.

10 My insurance pays -- I pay a
11 copay on my prescriptions. So my
12 out-of-pocket expense is \$5 a
13 prescription.

14 Q. So a total of \$15, obviously.

15 A. Right. I didn't have any testing
16 or anything else involved with it, other
17 than my routine visits.

18 I don't believe the -- well,
19 I looked at the digoxin and that wasn't
20 that expensive anyway. The digoxin one,
21 later on. I guess it's listed on there.

22 Q. Did you pay the same amount for
23 those prescriptions?

24 A. I pay \$5 for each. It's a copay,
25 \$5 of my health plan, yes.

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1 Q. By "those prescriptions," I mean
2 the digoxin.

3 A. These here, yes, they would have
4 been \$5, too. I believe if it's a
5 generic -- or if it's brand name, it's
6 15 or 20, something like that. But, I
7 guess, this is generic digoxin, I
8 believe.

9 Most likely I would have paid
10 \$5. I don't have my receipts or
11 anything with the Digitek, but it would
12 have probably been \$5.

13 MR. UNDERHILL: I don't think
14 I have anything else, unless you want to
15 follow up.

16 MR. SIMON: I think so.

17 EXAMINATION

18 BY MR. SIMON:

19 Q. I think one more question,
20 Mr. Chambers.

21 A. Sure.

22 Q. Did you receive the same benefit
23 from the Digitek that you received from
24 taking the digoxin?

25 MR. PETTIT: Object to the

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1 form.

2 THE WITNESS: Based on the
3 problems I had with the contractions, I
4 don't feel it was a beneficial -- I
5 don't think it was a benefit.

6 My own personal experience, I
7 haven't had the severe contractions
8 since I stopped taking it, so...

9 BY MR. SIMON:

10 Q. Is it fair to say that you
11 received the same lack of benefit from
12 the Digitek that you received from the
13 digoxin?

14 MR. PETTIT: Object to the
15 form.

16 THE WITNESS: I don't know
17 how to answer that myself. Other than a
18 lack of benefit, basically. Yeah.

19 MR. SIMON: Can you read the
20 question back to him. That may help.

21 (The court reporter read back
22 the following:

23 "QUESTION: Is it fair to say
24 that you received the same lack of
25 benefit from the Digitek that you

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1 WITNESS CERTIFICATION

2
3 I hereby certify that I
4 have read the foregoing transcript of my
5 deposition testimony, and that my
6 answers to the questions propounded,
7 with the attached corrections or
8 changes, if any, are true and correct.

9
10
11
12 _____ _____
13 DATE ALAN W. CHAMBERS

14
15
16
17 _____
18 PRINTED NAME